IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.6954 OF 1998

Mr.Datta Linga Toshatwad ...Petitioner

vs.

The Union of India & others. ...Respondents.

Mr.V.M.Tayade, for Petitioner.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 22nd September,2004

ORAL JUDGEMENT (PER S.U.KAMDAR,J.)

1. In the present petition, the petitioner is challenging the order of termination of services dated 2nd November,1998 passed by the third respondent. The relevant facts of the present case are as under:-

2. The petitioner joined the services on 23.4.1986 in the Central Reserve Police Force as a Constable. The petitioner was in service for the period of 1986 to 1997. ON 16.6.1997, the petitioner applied for leave to proceed to his home town at Nanded. However, it is the case of the petitioner

that in July,1997, the petitioner was admitted to the

Government hospital for treatment as he was suffering from depression. It is the further case of the petitioner that he forwarded various letters seeking extension of his leave but there has been no reply. The petitioner thereafter received an order of termination dated 2nd November,1998 passed by the third respondent. The petitioner has challenged the said order of termination in the present petition. The respondents have filed their reply.

3. In paragraph no.6 of the said affidavit, it has been contended by the respondent that the petitioner availed of sixty days earned leave for the period from 14.4.1997 to 13.6.1997. It is the case of the respondents that thereafter, the petitioner rejoined the services and again proceeded on 15 days casual leave with effect from 16.6.1997 upto 2.7.1997. On 2.7.1997, his leave expired, but the petitioner did not resume the duty and over stayed without prior permission or sanction from the competent authority, and therefore, according to the Respondent, departmental inquiry was conducted and the petitioner’s services were terminated.

4. We have perused the petition. The

petitioner has produced a medical report of the S.G.G.M.Hospital, Nanded, as also the document

indicating that the petitioner was suffering from serious depression and was not in good health. The Learned Advocate for the petitioner also brought our attention to the judgement of Supreme Court "Union of India & others Vs. Giriraj Sharma; AIR 1994 Supreme Court 215, in which it has been held as under:-

> "2. Mr.Jain the learned counsel for the appellant Union of India contended that the interpretation placed on Section 11(1) of the Central Reserve Police Force Act, 1949 (hereinafter called "the Act") is not correct and it is on account of this erroneous understanding of the provision that the High Court quashed the order of dismissal. In support of his contention he invited our attention to a decision of the Rajashtan High Court reported in AIR 1965 Raj 140. He also relied on certain other decisions but it is sufficient to

state that according to him the learned Judges of the High Court had committed an error in

interpreting the said sub-section. In our opinion, it is not necessary for us to construe sub-section (1) of Section 11 of the Act in the backdrop of the facts of the present case. Assuming Mr.Jain is right, we are of the opinion that in so far as the present case is concerned the allegation is in regard to the incumbent having over-stayed the period of leave by 12 days. The incumbent while admitting the fact that he had over-stayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said

circumstances which have not been controvered in the counter is harsh since the circumstances show that it was not his intention to

wilfully flout the order, but the circumstances forced him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty, if they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission."

5 Though the respondents are served, none appeared on behalf of the respondents. We are of the opinion that in this case admittedly the petitioner was on leave upto 2.7.1997 and immediately on 3.7.1997 the inquiry proceedings have been conducted by the authorities which culminated in passing an order terminating the services of the petitioner.

6. In so far as contention of principles of

natural justice is concerned, the respondents have replied that they have served the petitioner with the notice and even the complaint was filed of desertion against the petitioner pursuant to which the warrant of arrest was also issued against the petitioner.

However, same was not executed as the petitioner was not found. In the circumstances, according to the respondents, they have complied with the principles of natural justice.

7. We are of the view that punishment inflicted of termination on the petitioner for over-staying, is dis-proportionate to the offences alleged, and therefore, cannot be sustained. We are further of the opinion that the petitioner is out of a job right from the year 1998 to 2004 i.e. is for almost a period of six years. In the aforesaid circumstances we are of the opinion that interest of justice will be met if the petitioner is reinstated in the services. However, the petitioner will not be entitled to any claim of back wages for the period of his absence from 1998 till the date of re-appointment. For the purpose of retiral dues and other benefits, the petitioner’s services will be treated as continuous services. With the aforesaid directions, we dispose of the aforesaid petition.

However, there shall be no order as to costs.

(A.P.Shah, J.)

22.9.2004. (S.U.Kamdar, J)